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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Review of the Pioneer's)
Preference Rules)

ET Docket No. 93-266

Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Notice of Proposed Rulemaking

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On October 21, 1993, the Federal Communications Commission (FCC or Commission) adopted a notice of proposed rulemaking to reconsider the validity of the Commission's pioneer's preference¹ for wireless communication in light of Congressional authorization of competitive bidding for blocks of spectrum. In the Matter of Review of the Pioneer's Preference Rules, ET Docket No. 92-266, Notice of Proposed Rulemaking (October 21, 1993) (NPRM). The Commission recognized that modification to the current rules governing pioneer's preferences might have an adverse deleterious effect on small businesses seeking to enter the wireless communication market. Pursuant to the Regulatory

¹ The Commission currently awards mutually exclusive licenses through lotteries. To promote technological developments in wireless communication, the FCC modified its lottery process by granting exclusive licenses to those parties that can demonstrate sufficient technical innovations to be awarded a license without competition. In essence, the award of pioneer's preference eliminates all other mutually exclusive applicants. Since the adoption of the pioneer's preference, more than 30 entities, many of them small businesses, have sought pioneer preference status.

Flexibility Act, 5 U.S.C. §§ 601-12, the Commission performed a regulatory flexibility analysis and specifically sought comments on what options should be taken to ameliorate adverse impacts on small businesses.

The Office of Advocacy agrees with the Commission's conclusion that repeal of or placing substantial limitation on access to pioneer's preferences may have a significant adverse impact upon a substantial number of small entities. However, the Office of Advocacy opines that the Commission is overly concerned with the impact of the pioneer's preferences on the conduct of competitive bidding² rather than on the public policy benefits associated with the pioneer's preferences. The Office of Advocacy concurs with the dissent of Commissioner Barrett that the Commission should not at this late stage abandon the pioneer's preference for those entities that have taken the initiative in developing new technologies and services. The Office of Advocacy opposes any mid-course correction for those entities that have currently obtained preferences or those that are currently seeking preferences. The Office of Advocacy also supports pioneer's preferences for future applicants. However, in lieu of pioneer's preferences for future applicants, the

² This concern is echoed by a number of parties that petitioned the Commission to reconsider the pioneer's preference in light of the authorization for competitive bidding. NPRM at ¶ 20 & n.12. The petitioners are all large businesses with access to substantial amounts of capital and would benefit dramatically from forcing smaller businesses with pioneer's preferences to relinquish them and enter an auction.

Office of Advocacy believes that such entities may be accommodated through bid preferences in competitive bidding for blocks of spectrum.³

Respectfully submitted,



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Acting Chief Counsel



Barry Pineles, Esq.
Assistant Chief Counsel

³ In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP Docket No. 93-253, Notice of Proposed Rulemaking, Comments of the Chief Counsel for Advocacy at 29-31 (November 10, 1993).